

P24727.A03



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : G. FINKELSHTAIN et al.) Confirmation No. 5280
)
) Art Unit: 3751
Appln. No. : 10/758,081)
)
) Examiner: S. O. Douglas
Filed : January 16, 2004)
)
For : REFILLING SYSTEM FOR A FUEL CELL AND METHOD OF
REFILLING A FUEL CELL

ELECTION WITH TRAVERSE

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Window, Mail Stop ____
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the Examiner's restriction requirement of April 15, 2005, the time set for response being one month from the mailing date from the U.S. Patent and Trademark Office, i.e., May 15, 2005, Applicant hereby requests an extension of two (2) months, i.e., from May 15, 2005 to July 15, 2005 and is concurrently filing a formal Request for Extension of Time, together with all requisite fees therefor. Authorization is hereby given to charge any fees necessary to preserve the pendency of this application to deposit account No. 19-0089.

Applicant hereby elects the invention of Species I, upon which claims 1-9, 15-25, 38-45, 47-64, 66-85 and 97-104 and 106-117 are readable. The above election is made with traverse for the reasons set herein below.

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In the instant Official Action, the Examiner indicated that claims 1-25, 38-85 and 97-117 were subject to an election requirement under 35 U.S.C. § 121.

The Examiner indicated that, in addition to the restriction requirement dated January 10, 2005, the claims are further subject to an Election of Species and are restrictable as between Species I shown in Figs. 1-3, Species II shown in Figs. 4, 5 and 13-17, Species III shown in Figs. 6 and 7, Species IV shown in Figs. 8-10, and Species V shown in Figs. 11 and 12. The Examiner also asserted that only claim 1 is generic.

Applicant submits that at least claims 1-9, 15-25, 38-45, 47-64, 66-85 and 97-104 and 106-117 are generic to each of the species noted above and that the Election of Species is improper at least for the following reasons.

Applicant submits that the Examiner has omitted one of the two criteria for a proper restriction requirement now established by the U.S. Patent and Trademark Office policy. That is, as set forth in M.P.E.P. § 803, "an appropriate explanation" must be advanced by the Examiner as to the existence of a "serious burden" if the restriction were not required.

In particular, the Examiner has not shown that a concurrent examination of the above-noted species would present a "serious burden" on the Examiner. In fact, the Examiner has essentially acknowledged that the individual groups would be classified in the same class. Moreover, the Examiner has failed to provide an appropriate statement indicating that the search areas required to examine the invention of one species would not overlap into the search areas for examining the invention of other species, and vice versa.

Applicant respectfully submits that the search for the combination of features recited in the claims of the above-noted groups, if not totally co-extensive, would appear to have a

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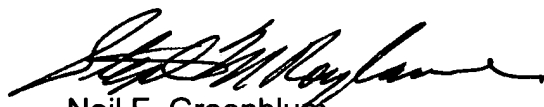
very substantial degree of overlap. Because the search for each group of invention is likely to be substantially the same, Applicant submits that no undue or serious burden would be presented in concurrently examining each of the species. Thus, for the above-noted reasons, and consistent with the Office policy set forth above in M.P.E.P. § 803, Applicant respectfully requests that the Examiner reconsider and withdraw the election requirement in this application.

For all of the above reasons, the Examiner's election requirement is believed to be improper. Nevertheless, Applicant have elected, with traverse, the invention defined in Species I, and upon which claims 1-9, 15-25, 38-45, 47-64, 66-85 and 97-104 and 106-117 are readable, in the event that the Examiner chooses not to reconsider and withdraw the election requirement.

Authorization is hereby given to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Should there be any questions, the Examiner is invited to contact the undersigned at the below listed number.

Respectfully submitted,
G. FINKELSHTAIN et al.



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